

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**RUBEN FORCADE**

Claimant

VS.

**AGCO CORPORATION**

Respondent

AND

**AMERICAN ZURICH INSURANCE COMPANY**

Insurance Carrier

Docket No. 1,034,002

**ORDER**

Respondent and its insurance carrier (respondent) appealed the July 16, 2007, preliminary hearing Order entered by Administrative Law Judge Bruce E. Moore.

**ISSUES**

Claimant alleges he injured his right knee working for respondent as a welder. Claimant alleged he has sustained a repetitive trauma injury during the periods from January 2, 2007, through February 28, 2007, and each and every day worked after April 28, 2007, through the present.<sup>1</sup> But at the preliminary hearing, Judge Moore advised claimant the appropriate accident date was April 5, 2007, as that was the date claimant allegedly gave respondent written notice of the right leg injury.<sup>2</sup>

In the July 16, 2007, Order, Judge Moore awarded claimant medical benefits. Respondent contends Judge Moore erred as claimant failed to prove he injured his right leg working for respondent. Respondent first argues claimant had a previous back injury and, therefore, there is a reasonable suspicion that the back injury is now causing the symptoms in claimant's right leg. Next, respondent argues that claimant received assistance lifting at work and that claimant's testimony about lifting heavy items at work without a hoist is not credible. In addition, respondent argues the return to work slips

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<sup>1</sup> P.H. Trans. at 4.

<sup>2</sup> See K.S.A. 2006 Supp. 44-508(d).

completed by Dr. Joseph W. Luinstra and Dr. Vello Kass do not indicate claimant's injury occurred at work. And finally, respondent contends the medical opinion from Dr. Michael H. Munhall should not be considered as the doctor is biased towards claimant and merely parroted the date of accident used by claimant in his Application for Hearing. In short, respondent requests the Board to deny claimant's request for benefits.

Conversely, claimant contends the preliminary hearing Order should be affirmed. Claimant argues he has proven his work activities either injured or aggravated his right leg and, therefore, he is entitled to receive workers compensation benefits.

Clearly, the change in job duties, and repeated carrying/"walking" the completed welded panels beginning in *[sic]* January 2, 2007 and continuing each and every working day thereafter caused the increased pain, worsening of the condition, and the current need for treatment, which clearly under the law is enough for the claimant to meet his burden of proof that he sustained a compensable injury.<sup>3</sup>

The only issue before the Board on this appeal is whether claimant injured or aggravated his right leg due to repetitive use or repetitive traumas that arose out of and in the course of his employment with respondent. Respondent states in its brief that notice is not an issue at this juncture of the claim.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After considering the record compiled to date and the parties' arguments, the undersigned Board Member finds and concludes the preliminary hearing Order should be affirmed.

Claimant works for respondent as a welder. In January 2007, after claimant's job was modified he began experiencing pain in his right leg. Claimant attributed those symptoms to his work, which he contends requires him to lift and handle heavy panels. Some of the panels weigh slightly more than 50 pounds, others weigh approximately 77 pounds. According to claimant, after the panels are welded he is required to lift or pull the panel off a hydraulic lift and then place the panel on a small cart.

While claimant continued to work for respondent, his right leg symptoms worsened. Claimant was sent home on February 28, 2007, as he had difficulty walking. Consequently, claimant was off work until April 9, 2007.<sup>4</sup> Presently, claimant continues to experience pain in his right leg that goes up into his buttocks.

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<sup>3</sup> Claimant's Brief at 15 (filed Aug. 29, 2007).

<sup>4</sup> P.H. Trans. at 42.

But this is not the first instance that claimant has experienced symptoms in one of his legs. Claimant has undergone back surgery and continues to experience left leg pain that he attributes to his back condition. Indeed, respondent accepted claimant back to work after his surgery, despite his work restrictions and limitations.

After claimant completes his welding on the panel, the panel is loaded onto a cart that transports the panel from the welding department to the dip line. The parties disagree whether the electric hoist can be used to load the panel. Claimant contends the hoist does not reach the cart when it is placed in its normal location and there is a lack of space to maneuver it closer to his work area. Claimant testified, in part:

Q. (Mr. Shoaf) Actually, Mr. Forcade, you testified that the hoist wouldn't reach the cart, right?

A. (Claimant) It does not reach.

Q. Okay, and the reason you're testifying that it doesn't reach the cart is that you don't even know that it'll reach the cart because you're not the one who really puts those objects on there?

A. I was doing it until I hurt myself.

Q. Well, Mr. Forcade, why didn't you just move the cart to within two foot of the yellow line and use the hoist?

A. There's no space.

. . . .

Q. Okay, all right, and do you not see that he's using the hoist and standing there to place that cart -- that panel on the cart just as the cart was positioned in [exhibit] G?

A. So that they could take that picture.

Q. Well, the point is --

A. It's never done that way.<sup>5</sup>

Claimant's weld department crew chief, David Brewer, testified he has observed other employees help claimant lift the 70-pound panels and that other welders will "walk"

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<sup>5</sup> P.H. Trans. at 35, 36.

the panels to the cart without utilizing the hoist. Mr. Brewer was unable to say whether or not claimant manually moved the panels to the cart.

Claimant learned either on February 28 or March 1, 2007, that respondent was denying the right leg problem as being related to his work. When claimant saw his personal physician, Dr. Joseph W. Luinstra, on March 1, 2007, the doctor recorded the following history:

The patient is a 51-year-old Hispanic male, with some English limitations, who presents for severe right knee pain. He apparently was lifting some very heavy parts at Agco yesterday, when he hurt his knee. Work apparently refused to cover this as a work comp. injury, saying that his past health issues play a role in this problem today. We have talked with Agco office at least twice today, and they deny coverage for him with work comp. The patient is very angry about this, and wants this covered under work comp. He has relented to have this covered under his personal insurance until those issues can be resolved, but he is having such significant pain that it hurts to walk, even with his cane. He does have a host of chronic health issues, including diabetes, hypertension, proteinuria, back pain with left leg radiculopathy and some atrophy in the right leg from past nerve damage.<sup>6</sup>

Dr. Luinstra's medical records from a March 5, 2007, appointment with claimant indicate an MRI on claimant's right knee indicated claimant had a torn quadriceps tendon. Again, the doctor noted claimant attributed the right leg problem to lifting something heavy at work. Several days later, claimant saw another doctor in Dr. Luinstra's clinic, Dr. Vello Kass, who diagnosed claimant as having patellofemoral pain syndrome and patellar tendinitis with prepatellar bursitis. Dr. Kass recorded a history that claimant began having right knee pain on February 23, 2007, with the pain severely worsening on February 28, 2007. Dr. Kass noted claimant had no particular injury.

At his attorney's request, claimant was evaluated by Dr. Michael H. Munhall. The doctor examined claimant in April 2007 and obtained a history that claimant's right knee symptoms began in approximately January 2007 from lifting heavy parts onto a cart at work. According to Dr. Munhall, the March 2007 MRI that claimant underwent indicated probable tendinopathy or a partial tear of the patellar tendon and quadriceps tendon. The doctor related the right knee injury to claimant's work.

Judge Moore determined claimant injured his right leg working for respondent. This Board Member agrees. The dispute over the electric hoist is a red herring as it does not address the true issue in this claim – did claimant injure his right leg lifting or handling the heavy panels? Claimant testified that beginning in January 2007 he began moving heavy

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<sup>6</sup> P.H. Trans., Resp. Ex. B.

parts at work. The office notes from Dr. Luinstra and the medical report from Dr. Munhall indicate claimant attributed his right knee complaints to his work. There is no evidence at this juncture to link claimant's present right knee complaints to his earlier back injury. In summary, it is more probably true than not that claimant injured his right knee at work and such injury arose out of and in the course of his employment with respondent. Consequently, the preliminary hearing Order should be affirmed.

Although it may be true claimant's return to work permits did not specify that claimant's injury was caused by work, the doctors who prepared those forms neither testified nor provided their opinions by letter or other means. Consequently, at this time it is not known whether the work permits reflected the doctors' opinions or merely represented respondent's pronouncement that the injury would not be approved as a work-related injury.

By statute, preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.<sup>7</sup> Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2006 Supp. 44-551(i)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

**WHEREFORE**, the undersigned Board Member affirms the July 16, 2007, Order entered by Judge Moore.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of October, 2007.

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BOARD MEMBER

c: Joni J. Franklin, Attorney for Claimant  
Larry Shoaf, Attorney for Respondent and its Insurance Carrier  
Bruce E. Moore, Administrative Law Judge

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<sup>7</sup> K.S.A. 44-534a.